[2020] IEHC 239

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 849 JR]

IN THE MATTER OF SECTIONS 5 AND 10 OF THE PLANNING AND DEVELOPMENT ACT, 2000 AS SUBSTITUTED BY THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT, 2002 AND THE PLANNING AND DEVELOPMENT (STRATEGIC INFRASTRUCTURE) ACT, 2006

BETWEEN

CORNELIUS A. DENNEHY AND SUZANNE DENNEHY

APPLICANTS

AND

AN BORD PLEANÁLA, MINISTER FOR HOUSING, PLANNING AND LOCAL GOVERNMENT, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

DONAL COFFEY

NOTICE PARTY

JUDGMENT of Mr. Justice Meenan delivered on the 19th day of May, 2020

Introduction

1. The central issue in these judicial review proceedings is whether a gate placed by the applicants on their land is or is not an "*exempted development*" for the purposes of planning legislation. This may seem an easy issue to resolve but when the purpose of the gate is to prevent members of the public having access to a lakeshore where a local boat club has its premises, it quickly becomes clear that matters are somewhat more complex. The placing of the gate in question has led to two Circuit Court actions and two decisions of the first named respondent (the Board), both of which have been the subject of judicial review proceedings. It is the second decision of the Board that is the subject of these proceedings. More importantly, the placing of the gate has led to the applicants and their family being subjected to violence and intimidation, and to their property being wantonly damaged.

2. Before considering the issues that arise, it is necessary to firstly consider the *locus* of the gate in question and, secondly, the various legal proceedings that have ensued.

The Gate

3. The following paragraphs should be read in conjunction with the map appended to this judgment. (Appendix 1)

4. The applicants reside at Fossa, Killarney, County Kerry with three of their children. The applicants are the owners of lands comprised in folios 4433F, 34792F and 15202F of the Register of Ownership of Freehold Land of Kerry. The applicants' land and properties are clearly marked on the map.

5. Lough Leane lies to the south and is marked on the map. On the north is the N72 national secondary road (Killarney to Killorglin), also marked on the map. As one goes from west to east on the map, at "*Murphy house*" there is a turn to the right where the laneway commences. The laneway goes south past a number of houses and a hotel. The laneway then turns west past two houses and reaches the boundary of the applicants' property. At

this point, the laneway proceeds in a south-westerly direction. At a point marked X on the map, the laneway turns south to the lakeshore and ends at a point Y.

6. The gate, the subject of these proceedings, was erected by the applicants on their property at point A on the map. Another gate was erected at point B. It is now necessary to set out the events that led to the erection of the gate at point A.

Background to the erection of the gate

7. To the west of the applicants' land lies those of Sir Maurice O'Connell (O'Connell). O'Connell enjoys an undisputed right of way between the points X and Y marked on the map. For many years, O'Connell and his predecessors in title had a private boathouse on his lands on the shore of Lough Leane, which hosted a boat/rowing club of which the first named applicant was a member (the Fossa Rowing Club). The Fossa Rowing Club trained out of the O'Connell boathouse. Members of the club entered O'Connell's lands directly from the N72 to the north. During this time, the first named applicant and his late father actively assisted the activities of the Fossa Rowing Club.

8. From time to time during those years, members of the Fossa Rowing Club would request access to the boathouse over the applicants' lands. Permission was generally granted. Further, the applicants would also allow people to park their cars on their property during the summer when the Fossa Rowing Club was operating.

9. In 1989, O'Connell's late father, Sir Morgan O'Connell, died and O'Connell no longer wished to facilitate the activities of the Fossa Rowing Club as he had done. Three members of the Fossa Rowing Club approached the first named applicant and asked for permission to walk over his land from points A to Y on the map. This was agreed. Unfortunately, this was the start of the trouble.

10. The first named applicant has deposed in his grounding affidavit that it was not long before members of the Fossa Rowing Club exceeded the permission that had been granted and began to trespass on the applicants' lands. From about 1993, a small number of members became more aggressive, even bringing machinery onto the applicants' lands and causing damage. Some members of the Fossa Rowing Cub also asserted that they had a right of access to the lakeshore via the laneway from the applicants' lands. Such a right was resisted by the applicants, but to little avail.

11. Matters escalated to such an extent that, in or about May, 2010, the applicants installed closed circuit television and two gates with signage to the effect that this was private land. The gate (at point A on the map), which is the subject of these proceedings, was placed to prevent vehicular access and to restrict pedestrian access to those who would acknowledge that access was with the permission of the applicants. This gate was upgraded in September, 2015. The other gate was placed at point B on the map. Whilst both gates were kept locked, the applicants did allow members of the Fossa Rowing Club to enter their lands by a side access so that they could continue to access the lake in order to train for local competitions.

12. From about 2012, matters took a more sinister turn. According to the applicants, the number of incursions onto their property became not only more blatant but also more confrontational. On a number of occasions An Garda Síochána had to be called to deal with persons who insisted on trespassing on the applicants' lands and who refused to desist from doing so. In April, 2012, the first named applicant, having been personally assaulted, closed all pedestrian access.

13. Public events were organised seeking to establish the existence of a public right of way over the laneway, not only by the Fossa Rowing Club but also by other organisations such as the "*Fossa Way Committee*" and the "*Men's Shed*". These events were reported in the local newspaper, "*The Kerryman",* and the first named applicant has exhibited these articles in his grounding affidavit. Accompanying these articles are photographs which clearly show numerous people on the applicants' side of the gate. Fixed to the gate is a sign stating clearly: "*Private Property".*

14. These organised public events cannot have been anything other than frightening and intimidating for the applicants and their family. However, worse events occurred in that the applicants received an anonymous written threat warning them to leave Fossa. Shots were fired over their dwelling house and their dog was shot. This was all in addition to their property being damaged.

15. It should be noted that a number of members of the Fossa Rowing Club did behave appropriately in that they informed the applicants that they disagreed with what had been happening and apologised for the suffering which the applicants and their family had been put through. At that point, the applicants were facing two separate Circuit Court actions.

Circuit Court actions

16. The first Circuit Court action was instituted by O'Connell, the applicants' neighbour. He sought to establish a right of way from point A to point X on the map. The second Circuit Court action was brought by plaintiffs nominated by the Fossa Rowing Club. They were also seeking to establish the same right of way as claimed by O'Connell.

17. The O'Connell claim was heard for a day and the claim of the Fossa Rowing Club was heard over three days in the Circuit Court.

18. The claims for the public right of way were dismissed by the Circuit Court Judge on the grounds that in each of these proceedings the plaintiffs had failed to bring a relator action and had not obtained the "*fiat*" of the Attorney General. However, the Circuit Judge permitted the plaintiffs to amend their proceedings to prosecute a claim for local customary rights of way. The case proceeded on that basis.

19. Following the hearing in the Circuit Court, on 25 February 2016, the Circuit Court Judge gave a lengthy and detailed judgment, setting out his findings of fact having heard and considered the evidence. Both claims were dismissed. No appeal was filed by O'Connell, and the Fossa Rowing Club, having served a notice of appeal, subsequently withdrew it.

20. The ruling of the Circuit Court might have been the end of the matter, but it was not. The notice party decided that he would challenge the erection by the applicants of the gate on the basis of the provisions of planning legislation.

The notice party

21. The notice party owns the hotel marked on the map which abuts the laneway. He gave evidence in support of both O'Connell and the Fossa Rowing Club at the Circuit Court hearings. The notice party appeared, in person, at the hearing of this application. It should be noted that in the course of his submission to the Court, he disassociated himself from the violence and intimidation that was directed to the applicants and their family. Indeed, he described himself as being "*taken aback*" by the campaign directed towards them.

22. The notice party made an application to Kerry County Council (the Council) pursuant to s. 5 of the Planning and Development Act, 2000 (the Act of 2000) to determine the question of whether the gate erected by the applicants was or was not an "*exempted development*" for the purposes of planning legislation. Attached to this application were a number of statements from various persons regarding their user of the laneway over many years, if not decades. On 9 December 2016, the Council referred the application to the Board for their determination.

23. The first named applicant made a submission to the Board on 11 January 2017. This submission, essentially, set out the various matters and events which I have referred to earlier in this judgment.

24. Having received a report from an inspector, the Board concluded: -

"(a) The erection of the subject gate constitutes development within the meaning of the Planning and Development Act, 2000 as amended.

(b) A gate has been erected across a laneway that is indicated on historic maps of this area.

(c) The erection of the gate would not come within the scope of class 5, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, but would come within the scope of class 9 of this part, and would ordinarily be classified as exempted development on this basis; but

(d) The erection of the gate has consisted of the fencing or enclosure of land, that is, the subject laneway, which, on the basis of the documentation submitted, was habitually open to or used by the public during the ten years preceding its erection as a means of access to the lakeshore of Lough Leane, which is a place of natural beauty and recreational utility, and, therefore, the restrictions on exemption, provided for in Article 9(1)(a)(x) of the Planning and Development Regulations, 2001, as amended, apply in this instance."

25. The applicants challenged this decision in judicial review proceedings having record number 2017/647 JR. Leave to apply for judicial review was granted (Noonan J.) on 31 July 2017. These proceedings were "*settled*" with the Court granting an Order of certiorari in respect of the decision made by the first named respondent on 26 June 2017. The Order also provided that *"all records and entries relating thereto be quashed without further order"*. Part of the settlement was that the matter would be remitted to the Board to be "*determined in accordance with law".*

26. It has to be said that the settlement that was reached in the first judicial review proceedings was not satisfactory in that the legal infirmity which underlined the decision of the Board was not identified and the matter was simply remitted. Matters are not helped by the following extract which is taken from a memorandum from the Board's file, dated 22 February 2018, which reads: -

> "A new file cover has been inserted over the old file cover (thereby maintaining the old file cover as a record) … The reactivated file is now submitted to the Board in accordance with the terms of the court order."

Surprisingly, the legal implications of setting aside the earlier decision of the Board and remitting it back to the Board for a further decision without more were not dealt with in the course of the hearing of this application.

27. In any event, both the applicants and the notice party made further submissions to the Board. The submission of the applicants was by way of a letter from their Solicitor, dated 1 June 2018, which restated their position and placed emphasis on the decision of the Circuit Court. The submission from the notice party was somewhat more detailed but essentially was a restatement of his earlier position as outlined in correspondence to the Board prior to the first decision. On the consequences of the decision of the Circuit Court, the notice party stated that there was no "*legal connectivity*" between the Circuit Court cases and the restriction provided for in Article 9(1)(a)(x). The notice party further submitted that the findings of the Circuit Court were limited to the parties involved in the Circuit Court actions and had no bearing on the legality of public access using the laneway of the lakeshore of Lough Leane.

28. The Board gave its decision on 30 August 2018. The decision was in the same terms as its earlier decision (set out at para. 24 above), save for the deletion of subpara. (b). This deletion is not material.

29. As the Board had, effectively, reached the same decision as it had on the first occasion, the applicants again brought judicial review proceedings.

Application for judicial review

30. Leave to apply for judicial review was granted (by Order of Noonan J.) on 22 October 2018. The primary relief sought is: -

"(i) An order of *certiorari* quashing the decision of the Board of 30th August, 2018.

(ii) An order of *certiorari* quashing determinations of the Board in its decision of 30th August, 2018, on the basis the determinations are perverse, incorrect and unreasonable and in particular findings, expressly or impliedly that:

(a) the erection of a gate can constitute in law, an enclosure of land when the land was entirely enclosed (bar the gate)
(b) the applicants private land was "habitually open to or used by the public during the ten years" preceding the erection by the applicants of the gate
(c) trespass to the applicants' lands may be taken into consideration to found legal rights and that
(d) trespass to the applicants' lands may *per se* result in a diminution or restriction of the applicants' property rights."

31. The applicants were granted leave to seek certain reliefs against the second, third, and fourth named respondents concerning the constitutional validity of certain Regulations of 2001, in particular, Article 9(1)(a)(x).

32. At the hearing of the application, the applicants stated that they were no longer seeking relief against the second, third, and fourth named respondents. The legal representatives of these respondents then withdrew from the hearing.

Principles to be applied

33. There was little dispute between the parties as to the jurisdiction of the court on an application such as this. These proceedings are not a rehearing of the issues before the Board, this Court is not a court of appeal from decisions of the Board. Thus, it is for the applicants to satisfy the Court that the Board's decision in question was unreasonable and irrational.

34. The Court was referred to the following oft-cited passage of Henchy J. *in State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642: -

> "I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted *ultra vires,* for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, *inter alia,* that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

This passage was cited by Finlay C.J. in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39, where he stated at page 71: -

> "It is clear from these quotations that the circumstances under which the court can intervene on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare. It is of importance and, I would think, of assistance to consider not only as was done by Henchy J. in *The State (Keegan)*

> *v. Stardust Compensation Tribunal*… the circumstances under which the Court can and should intervene, but also in brief terms and not necessarily comprehensively, to consider the circumstances under which the court cannot intervene.
>
> The Court cannot interfere with the decision of an administrative decision-making authority merely on the grounds that (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it. …"

Relevant provisions of planning legislation

35. Given the complexities of planning legislation, I will confine the extracts from the legislation to what is directly relevant in this application.

36. The Board decided that the erection of the gate was a "*development*" for the purposes of s. 3 of the Act of 2000. The next matter which the Board had to consider was whether this development was an "*exempted development".* This is determined by the provisions of Article 6 of the 2001 Regulations. Article 6(1) provides: -

> "Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act…"

The erection of the gate did come within the scope of class 9, Part 1 of Schedule 2 and, thus, would have been an exempted development but for the provisions of Article 9 which states: -

"(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would –

…

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any… lakeshore… or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,"

The issues

37. In reaching its decision, the Board decided that the laneway had been habitually open or used by the public during the preceding ten years as a means of access of the lakeshore of Lough Leane. Thus, the gate was not an *"exempted development"* so the applicants were required to obtain planning permission (or retention) for it.

38. The applicants identified the issues to be determined, as follows:-

(1) Whether the Board's decision of 30 August 2018 was unreasonable and irrational; and

(2) Whether the Board had correctly interpreted Article 9(1)(a)(x) of the 2001 Regulations.

Submissions of the parties

39. The Board sought to minimise the effects of its decision, maintaining that it merely required the applicants to regularise the planning status of the gate and that no decision had been taken as to whether or not they were entitled to such permission. On one level, this may be correct, but set against the circumstances under which the gate was put in place and the violence and intimidation which the applicants and their family have been subjected to, having to go through the planning process does present a considerable, if not frightening, hurdle for them.

40. However, more substantial grounds of opposition were put forward by the Board. Ms. Aoife Carroll BL, on behalf of the Board, submitted that there was evidence before the Board on which it reached its decision and, applying the principles set out in *O'Keeffe v. An Bord Pleanála,* the applicants were not entitled to the reliefs sought.

41. As to the applicants' reliance on the decision of the Circuit Court, Ms. Carroll submitted that what the Circuit Court proceedings concerned was whether or not a right of way was established over the laneway. The Board, however, was not dealing with the issue of a right of way but rather whether the laneway had been habitually open to or used by the public for the preceding ten-year period to gain access to the lakeshore. It was submitted that there was evidence, by way of numerous statements from individuals, submitted by the notice party to the Board that such was the case.

42. Ms. Carroll relied upon the decision of Hanna J. in *Satke v. An Bord Pleanála* [2009] IEHC 230. This case concerned access to a beach. The applicant, whose lands adjoined the beach, erected certain earthworks which comprised an earth and stone embankment. The location of these earthworks allegedly caused an obstacle to access to the beach and the removal of an area which had been previously used for car parking and the hauling up of boats. A dispute arose between the parties concerning the planning status of these earthworks. The matter was referred to the Board under s. 5 of the Act of 2000.

43. The Board, as in the instant case, decided that the earthworks came within the terms of Article 9(1)(a)(x) and, thus, planning permission was required. This decision was judicially reviewed on the grounds, *inter alia*, that the Board relied on evidence that was inadequate, unreliable and, in part, hearsay. Further, it was alleged that the Board did not take all relevant considerations into account. In his judgment, Hanna J. set out the passages which I have referred to from the judgment of Finlay C.J. in *O'Keeffe v. An Bord Pleanála* and stated: -

> "Can it, therefore, fairly be said that the respondent had no evidence supportive of its decision before it or, as an alternative, that the evidence before it was so paltry and unreliable as to mandate disregarding it? Certainly, it cannot be doubted that a formidable corpus of evidence was presented on behalf of the applicant and skilled argument was advanced by his planning consultants. Confronting this impressive

> array of argument and evidence was, Mr. Galligan S.C. argued, two letters from a local Green Party councillor and one from Ballydehob Community Council, under the auspices of Muintir na Tíre. These were largely hearsay…"

and: -

> "During the course of the applicant's submissions to An Bord Pleanála, there does not appear to be any major challenge to the complaints about the absence of car parking space or room for hauling up and storing boats. Therefore, for what it is worth, the evidence from Councillor Hudson and Muintir na Tíre, in letter form, was available to the Board in reaching its decisions. It may not be the most compelling evidence in the world. Had the Board been persuaded by the evidence from the planning consultants, one could scarcely have had grounds for complaint, as far as the law goes. But that is the point. The respondent [the Board], in my view, had available to it sufficient credible evidence upon to which to deliberate and adjudicate on the issues before it, provided, of course, it did so in accordance with law and with due regard to the applicant's legal and constitutional rights."

It was submitted that this decision was illustrative of the principle that it is not open to a court, on judicial review, to consider the weight of the evidence but rather whether there was evidence in support of the impugned decision.

44. Mr. Mark de Blacam SC, on behalf of the applicants, placed particular emphasis on the decision of the Circuit Court. Although Mr. de Blacam accepted that what was involved in the Circuit Court decision was whether or not there was a right of way, nonetheless, given the findings of fact in the Circuit Court, it was not open to the Board to make a finding that the laneway had been habitually open to the public for a period of ten years as a means of access to the lakeshore. He submitted that persons who used the laneway did so with the consent of the applicants, so those who did not have consent were trespassers. It followed from this that the laneway was not *"open to or used by the public".* The fact that a number of people over the years may have used the laneway without the consent of the applicants did not alter the situation as the use of the laneway by the public had to be habitual.

Consideration of submissions

45. I have already set out the limitation of the Court's jurisdiction in judicially reviewing the decision of the Board. Whereas the Court is not entitled to consider and evaluate the evidence before the Board, it is entitled to review how that evidence was considered and conclude that the resulting decision was irrational and unreasonable.

46. The notice party's submission to the Board was accompanied by a number of statements from various individuals who had used the laneway over many years for access to the lake. These persons consisted of people who lived in the area or who had returned from time to time as visitors. There appear to have been fifteen or more such statements. There was also a statement from the manager of the hotel, marked on the map, stating that residents had enjoyed "*unhindered and unrestricted access to the lakeshore".*

47. The applicants in their submission to the Board took issue with these statements. It was also the case that many of those who took part in the events referred to at para. 13 above received letters from the applicants' then Solicitors stating that such persons were trespassing on private property.

48. At this point, there is a clear conflict of evidence which the Board may have been entitled to resolve against the applicants. However, there was, in addition to these statements, a decision of the Circuit Court.

49. The applicants stated that the Board had in its possession, following the first judicial review proceedings, the judgment of the Circuit Court Judge. In its Statement of Opposition, the Board states: -

> "It is denied that the decision of the Board was made without due regard to the decision of Court (sic) of competent jurisdiction…"

The Board maintains that the Circuit Court was dealing with a different matter, namely, whether or not there was a right of way over the laneway, and what the Board concluded was that the laneway was habitually open to the public for access to the lakeshore for a period of ten years. This was a different issue.

50. The Board is correct in stating that the Circuit Court was dealing with whether or not there was a right of way, but the Circuit Court did make findings of fact based on the evidence given of the user of the laneway over many years. This evidence was given by various interested parties, including the notice party, over a number of days. The evidence was given on oath and tested by cross-examination. In his detailed judgment, the Circuit Court Judge, His Honour Judge Terence O'Sullivan, made a number of findings, as follows: -

(a) "It is undoubtedly the situation that whatever the core deal relations had been that I have referred to had become a problem, and in 1993 essentially what the boat club were doing is they were asserting a right. The upshot of the confrontation which occurred when they were bringing the trailer down with the container was that they said they could do it and Mrs. Dennehy said no… there is no doubt the parties had agreed at that particular stage, it was very apparent that Mrs. Dennehy, on behalf of her husband, the landowner, so we can say the 'landowners' were indicating that there was no right whatsoever to travel down to exercise this right of way, that in other words, they were constrained by the permission or consent of the landowners and that was the position in 1993." (page 6)

(b) "In 2010, after the planning permission had been obtained, the defendants placed gates across the road at points A and B on the map. These were placed on their own property and their position which they have maintained until today is that there is no right of way, there is no customary right and anybody who wants to traverse their land has to do so with permission." (page 6)

(c) "…it could be argued that from a reasonable period after May, 1993, say May, 1994, that the defendants were in the situation where they were acquiescing in the right by not doing anything to stop people, particularly having regard to the confrontation. But the 20 year is not there in any circumstance, because we all know that in 2010 the defendants put up gates and said 'this is private property and you are not coming through without our permission' basically…" (page 8)

(d) "…much of the evidence of user from the point of view of local people, local parishioners, whatever, was very nebulous, very unspecific. I think Ms. Murphy is correct in that: people might be wandering down to a swim or they might not, or they might be wandering down with their dog or they might be wandering for a walk. There was, there was a lack of specificity about it and, you know, if I am – if one is to declare a right over private land, one has to be specific, it has to be obviously something that can be policed. So, I think that the path, the fact that the pathway existed is far from sufficient, in my view, to establish a local custom…" (page 10)

51. It follows from the findings of the Circuit Court, based, as I have previously said, on sworn evidence that has been tested by cross-examination that members of the Fossa Rowing Club used the laneway with the consent of the applicant. The fact that others may have from time to time used the laneway without seeking the consent of the applicants does not alter the legal position. I refer the following passage from the joint judgments of Fennelly, McKechnie and McMenamin JJ. in *Walsh v. Sligo County Council* [2013] 4 I.R. 417 where they state: -

> "User by permission of the owner is not user as of right. At the same time, user without express permission is not necessarily user as of right. Whether particular acts of user are to be described as being as of right requires account to be taken of all the circumstances. Acts may be tolerated or indulged by a landowner *vis-à-vis* his neighbours without being considered to be the exercise of a right…
>
> The cases concerning toleration contain several indications that owners should not be constrained to be '*churlish'* and insist on their property rights. It would be undesirable and inconsistent with the policy of good neighbourliness if the law were so ready to infer dedication of public rights of way from acts of openness and tolerance that landowners were induced to enact a fortress mentality…"

52. In my view, the Board did not correctly consider the legal import of the decision of the Circuit Court. I believe this error arose out of the view taken by the Board that, whereas the Circuit Court was concerned with the issue of a right of way, the Board was not. On its findings of fact, the Circuit Court was satisfied that there was no right of way over the laneway. In so finding, this leads to the conclusion that the laneway was not "habitually open to or used by the pubic… as a means of access to any… lakeshore…".

53. The Board could only make its findings as to the user of the laneway by the public by ignoring the facts, as found by the Circuit Court, that such persons who were doing so

without the consent of the applicants were trespassers. I cannot see that such a finding by the Board would be legally permissible. It could not be the case that the Board is permitted to take a decision to the effect that the gate was not an exempted development on the basis of a public user which was unlawful.

54. I am satisfied that the Board erred in law in failing to correctly consider the Circuit Court decision and thereby made its resultant decision "*unreasonable or irrational".*

55. By reason of the foregoing, the applicants are entitled to an order of certiorari quashing the decision of the Board of 30 August 2018.

56. As this judgment is being delivered electronically, I invite the parties to make written submissions as to the consequential orders that follow from my decision, including the matter of costs.